

New Number  
042  
- A

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD  
ALBERT H. GREENE  
CARL C. DAVIS\*  
CHARLES T. KAPPLER  
JOHN H. DOYLE  
MILTON C. GRACE\*  
GEORGE JOHN KETO\*\*  
RICHARD N. BAGENSTOS

\* NOT A MEMBER OF D.C. BAR  
\*\* ALSO A MEMBER OF OHIO BAR

LAW OFFICES  
ALVORD AND ALVORD

200 WORLD CENTER BUILDING

918 SIXTEENTH STREET, N.W.

WASHINGTON, D. C.

20006-2973

December 20, 1983

OF COUNSEL  
JESS LARSON  
JOHN L. INGOLDSBY  
URBAN ALISTER

14222  
RECORDATION NO. 14222  
CABLE ADDRESS  
"ALVORD"

TELEPHONE  
AREA CODE 202  
393-2266

DEC 20 1983 -12

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 14222

14222

No. 3-354-102

440367 A AND A  
440348 CDAA UI

Mr. James H. Bayne  
Secretary  
Interstate Commerce Commission  
Washington, D.C.

DEC 20 1983 -12

PM DEC 20 1983

6:00:00

ICC Washington, D. C.

Dear Mr. Bayne:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. §11303 are three fully executed copies each of 1) Lease of Railroad Equipment dated as of May 5, 1983 between Citicorp Leasing, Inc., Lessor, and the Upper Merion and Plymouth Railroad Company, Lessee, a primary document, and 2) Acknowledgment of Security Interest and Sublease dated as of May 5, 1983 between Citicorp Leasing, Inc. and Funding Systems Railcars, Inc., a secondary document.

A general description of the railroad equipment covered by the enclosed documents is set forth on Schedule A attached hereto and made a part hereof.

The names and addresses of the parties to the enclosed documents are:

Lease of Railroad Equipment

Lessor: Citicorp Leasing, Inc.  
450 Mamaroneck Avenue  
Harrison, New York 10528

Lessee: Upper Merion and Plymouth Railroad Company  
P.O. Box 404  
Conshohocken, Pennsylvania 19428

Acknowledgment of Security Interest and Sublease

FSR: Funding Systems Railcars, Inc.  
2215 Sanders Road  
Northbrook, Illinois 60062

FEE OPERATION BR.

DEC 20 12 32 PM '83

RECEIVED

*Counting*

Mr. James H. Bayne  
Secretary  
Interstate Commerce Commission  
December 20, 1983  
Page Two

Lessor: Citicorp Leasing, Inc.  
450 Mamaroneck Avenue  
Harrison, New York 10528

The undersigned is agent for the Lessor named above for the purpose of submitting the enclosed documents for filing and recordation.

Kindly return the stamped copies of the enclosed documents not needed for your files to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006

Also enclosed is a check in the amount of \$60 payable to the order of the Interstate Commerce Commission covering the required recordation fees.

A short summary of the enclosed primary and secondary documents to appear in the Commission's Index is as follows:

Lease of Railroad Equipment dated as of May 5, 1983 between Citicorp Leasing, Inc., Lessor, and Upper Merion and Plymouth Railroad Company, Lessee; and Acknowledgment of Security Interest and Sublease dated as of May 5, 1983 between Citicorp Leasing, Inc. and Funding Systems Railcars, Inc., both covering ninety (90) 100-ton open-top hopper cars.

Very truly yours,

  
Charles T. Kappler

SCHEDULE A

DESCRIPTION:

Ninety (90) 100-ton open-top hopper cars, NW Class H-12, construction by Shenandoah-Virginia Corporation, delivery 1979.

RAILCAR ROAD NUMBERS:

UMP 6215, 6216, 6218, 6220, 6225, 6231, 6232, 6234, 6238, 6242, 6243, 6245, 6247, 6248, 6250, 6258, 6261, 6268, 6283, 6284, 6286, 6288, 6289; 6290; 6292, 6201, 6202, 6205, 6208, 6209, 6211, 6212, 6213, 6214, 6221, 6222, 6223, 6229, 6230, 6237, 6249, 6252, 6255, 6256, 6257, 6260, 6263, 6267, 6273, 6274, 6275, 6276, 6278, 6279, 6293, 6294, 6168, 6175, 6184, 6197, 6236, 6253, 6270, 6282, 6297, 6240, 6241, 6244, 6246, 6254, 6259, 6264, 6265, 6266, 6269, 6271, 6280, 6281; TWRY 6083, 6087, 6099, 6103, 6111, 6114, 6119, 6174; BDMX 171, 175; UMP 6022, 6193.

**Interstate Commerce Commission**  
Washington, D.C. 20423

**12/20/83**

OFFICE OF THE SECRETARY

**Charles T. Kappler, Esq.**

**Alvord & Alvord**

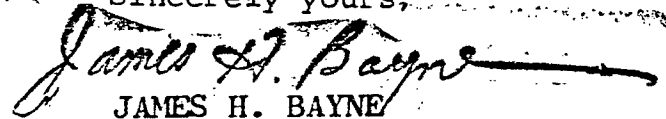
**918 16th St. N.W.**

**Washington, D.C. 20423**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **12/20/83** at **12:40pm** and assigned re-recording number(s). **14222 & 14222-A**

Sincerely yours,



**JAMES H. BAYNE**

Secretary

Enclosure(s)

SE-30  
(7/79)

---

14222  
RECORDATION NO. 14222 Filed 12/20/83  
DEC 20 1983 -12 40 PM  
INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of May 5, 1983

between

Citicorp Leasing, Inc.

Lessor,

and

The Upper Merion and Plymouth Railroad Company

Lessee.

---

Filed with the Interstate Commerce Commission  
pursuant to 49 U.S.C. § 11303 on \_\_\_\_\_,  
19\_\_ at \_\_\_\_\_ .m., recordation number \_\_\_\_\_.

# Lease of Railroad Equipment

## Table of Contents

|       |  | <u>Page</u> |
|-------|--|-------------|
| § 1.  | Definitions . . . . .                                      | 1           |
| § 2.  | Recitals . . . . .   | 2           |
| § 3.  | § 1168 Lease . . . . .                                     | 3           |
| § 4.  | Delivery and Acceptance . . . . .                          | 3           |
| § 5.  | Rentals . . . . .  | 4           |
| § 6.  | Additional Rental Duties . . . . .                         | 7           |
| § 7.  | Term of Lease; Cancellation . . . . .                      | 9           |
| § 8.  | Identification Marks . . . . .                             | 10          |
| § 9.  | Taxes . . . . .  | 11          |
| § 10. | Maintenance; Casualty Occurrences;<br>Insurance . . . . .  | 12          |
| § 11. | Reports . . . . .  | 15          |
| § 12. | Inspection . . . . .                                       | 16          |
| § 13. | Storage . . . . .  | 16          |
| § 14. | Compliance with Laws . . . . .                             | 17          |
| § 15. | Assessments . . . . .                                      | 17          |
| § 16. | Movement . . . . .   | 18          |
| § 17. | Collection . . . . .                                       | 18          |
| § 18. | Disclaimer of Warranties . . . . .                         | 19          |
| § 19. | Default . . . . .  | 19          |
| § 20. | Return of Units upon Default . . . . .                     | 28          |
| § 21. | Assignment; Possession and Use . . . . .                   | 31          |
| § 22. | Renewal Options . . . . .                                  | 34          |
| § 23. | Return of Units upon Expiration of<br>Lease Term . . . . . | 34          |

|   | <u>Page</u> |
|---|-------------|
| § 24. Initial Expense . . . . .                                   | 35          |
| § 25. Conditions Precedent . . . . .                              | 36          |
| § 26. Recording . . . . .   | 37          |
| § 27. Overdue Payments . . . . .                                  | 37          |
| § 28. Notices . . . . .   | 38          |
| § 29. Severability; Effect and Modification<br>of Lease . . . . . | 38          |
| § 30. Execution . . . . .   | 39          |
| § 31. Law Governing . . . . .                                     | 39          |
| Schedule A--Schedule of Units                                     |             |
| Schedule B--Prior Subleases of Units                              |             |
| Schedule C--Initial Expenses                                      |             |
| Schedule D--Units Not Suitable for Interchange Service            |             |
| Schedule E--Acknowledgment of Parent                              |             |
| Schedule F--Stipulation and Agreed Order                          |             |

## LEASE OF RAILROAD EQUIPMENT

This Lease Agreement is entered into as of this 5th day of May, 1983 between The Upper Merion and Plymouth Railroad Company and Citicorp Leasing, Inc.

§ 1. Definitions. As used in this Agreement the following terms have the following meanings:

- |                              |  |
|------------------------------|--|
| 1.1. "Lessor" --             | Citicorp Leasing, Inc.,<br>a Delaware corporation,<br>450 Mamaroneck Avenue<br>Third Floor<br>Zone 13,<br>Harrison, New York 10528   |
| 1.2. "Lessee" --             | Upper Merion and Plymouth<br>Railroad Company, a Pennsylvania<br>corporation, P.O. Box 404<br>Conshohocken, Pennsylvania<br>19428  |
| 1.3. "Units" --              | the 90 railcars identified on<br>Schedule A hereto and all sub-<br>stitutions.   |
| 1.4. "Affiliated<br>Road" -- | The Wisconsin & Southern<br>Railroad Co., a Wisconsin<br>corporation, 511 Barstow,<br>Horicon, Wisconsin 53032   |
| 1.5. "Gross Rentals" --      | all revenues net of reclaims<br>received from a Sublease<br>exclusive of revenues relating<br>to direct transportation or<br>switching of freight by the<br>Lessee and revenues relating<br>to casualty losses.              |
| 1.6. "Sublease" --           | any sublease, rental, utili-<br>zation, management or other<br>revenue producing agreement<br>between Lessee, its Affiliated<br>Road or Parent and any third<br>party concerning placing any<br>of the Units in or ready for |



service or between Lessee and its Affiliated Road or Parent. The term "Sublease" when used in this Lease includes reference to all applicable Prior Subleases.

1.7. "Prior Sublease" -- All subleases and the Units subject to them as described on Schedule B hereto all of which Lessor hereby approves.

1.8. "Lessor's Account" -- Account No. \_\_\_\_\_ at \_\_\_\_\_ Bank into which all amounts due to Lessor by Lessee under this Lease are remitted.

1.9. "Parent" -- Funding Systems Railcars, Inc., a debtor-in-possession in the United States Bankruptcy Court for the Northern District of Illinois and any successor corporation of it emerging from that reorganization case no. 81 B 11964.

§ 2. Recitals. The Lessor has acquired title to the Units of railroad equipment described in Schedule A hereto pursuant to a foreclosure sale previously held by the parties holding a perfected first security interest in and to the Units.

The Units are already marked with Lessee's or other identification marks, pursuant to a Sublease, and have been in the Lessee's possession or control pursuant to leases and subleases entered into by and among the prior owners of the Units or the Parent and Lessee.

The Lessee desires to continue to lease the Units but at the rentals and for the terms and upon the conditions hereinafter provided.

In consideration of the foregoing and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 3. Applicability of 11 U.S.C. § 1168. The Lessor and Lessee hereby acknowledge and recognize that the terms of 11 U.S.C. § 1168 apply to this Lease and the transactions contemplated by it. Such acknowledgment and recognition are of the essence of this Lease. The Lessee agrees that it will not contest in any way or at any time the applicability of 11 U.S.C. § 1168 to this Lease and the Equipment leased hereunder. The Lessee affirmatively states, represents and warrants that it is a railroad within the meaning of 11 U.S.C. §§ 101(33) and 1168, that this agreement is a lease within the meaning of 11 U.S.C. § 1168, that the Units are rolling stock equipment within the meaning of 11 U.S.C. § 1168, and that the provisions of 11 U.S.C. § 1168 apply with full force and effect to this Lease and the transactions contemplated by it. Lessee agrees to do or suffer nothing which would impair this Lease as a lease within the meaning of 11 U.S.C. § 1168. Lessor's sole and exclusive remedy for a breach of this Section 3 shall be to terminate this Lease and obtain, at Lessor's expense, possession and return of the Units.

§ 4. Delivery and Acceptance. The Lessee has accepted the Units pursuant to their prior lease to Lessee

or its Affiliated Road and accordingly accepts the Units "As Is, Where Is" on the date hereof without inspection, but subject hereafter to all the terms and conditions of this Lease (including but not limited to Lessor's obligation for direct car costs) and not any prior agreement (other than the Prior Subleases) to which Lessee, the Affiliated Road, Lessee's Parent or any former owner of the Units is or was a party.

§ 5. Rentals. No rental payments to the Lessor shall be due under this Lease for a Unit for so long as the Unit is not subject to a Sublease, including a Prior Sublease, pursuant to which Lessee receives rentals. Rental payments shall begin to accrue for a Unit from and after the date hereof immediately upon the date such Unit is subject to a Sublease, including a Prior Sublease pursuant to which Lessee is entitled to receive rentals. Such rental payment shall equal all Gross Rentals received by the Lessee in connection with the Unit from whatever source and for whatever reason, including but not limited to, per diem, incentive per diem, mileage, penalties, indemnity payments and insurance proceeds but expressly excluding payments payable to Lessee by other users and shippers of the Units for switching and/or transporting freight in the Units. Within 5 business days after the end of each calendar month, Lessee shall remit to Lessor's Account all sums it has received and to which Lessor is entitled pursuant to this Lease Agreement, with only the costs, expenses and fees incurred by or accrued to Lessee

and payable by Lessor under this Agreement subtracted therefrom. Until so remitted to Lessor all such sums received by Lessee shall be held as trustee for Lessor, until payment thereof is made to Lessor's Account. Lessee shall be entitled to subtract from monthly sums payable to Lessor hereunder twenty percent (20%) of the previous month's Gross Rentals on that portion of Gross Rentals less than or equal to an amount equal to \$600 times the number of cars subject to this Lease during that month. Lessee shall be entitled to subtract forty percent (40%) of that month's Gross Rentals on that portion of Gross Rentals which exceeds an amount equal to \$600 times the number of cars subject to this Lease during that month.

Lessee shall also be entitled to subtract from Gross Rentals, as incurred, maintenance, repair, insurance, storage, and other direct car costs, expenses and charges all of which remain the responsibility of Lessor hereunder unless assumed by any sublessee of the Units. If Gross Rentals received and not paid over to Lessor's Account are insufficient to reimburse Lessee for amounts due and payable to it under the terms of this Lease, then Lessee shall invoice Lessor therefor and Lessor shall remit such sums as may be due to Lessee within fifteen days of Lessor's receipt of such invoice. Lessee shall have a continuing lien on the Units in its possession for amounts properly chargeable to Lessor hereunder for such Units and not paid when due. Such lien shall not be deemed to release or otherwise waive

Lessee's rights against Lessor hereunder. For any charges known in advance to Lessee (but not including non-running repairs under AAR Rule 107 or 108) and payable by Lessor hereunder in any 30 day period aggregating in excess of \$200.00 per Unit or \$4,000.00 in the aggregate, Lessee must give Lessor at least fifteen (15) days advance written notice thereof (provided Lessee has itself received fifteen (15) days advance written notice thereof).

Lessor or its agents shall have, during Lessee's regular business hours, upon reasonable notice, the right at its own expense to inspect all Lessee's books and records pertaining to the Units, any Sublease, or any other information Lessor deems relevant to determine Lessee's compliance with its payment obligations hereunder. Lessee agrees to cooperate with and assist Lessor in any such inspection or audit of Lessee's books and records.

To secure payment of all rentals and other payments to which Lessor is entitled hereunder and all other obligations of Lessee hereunder to Lessor, Lessee hereby grants a security interest in and assigns to Lessor, all of Lessee's rights in, to and under any and all present and future rentals, payments and proceeds earned by and allocable solely to the Units under any present and future Subleases and all other claims, payments or proceeds pertaining to the Units accruing or arising from and after the date hereof. The grant of this security interest and assignment shall be governed by Article 9 of the Illinois Uniform

Commercial Code, except that perfection of this security interest and assignment shall be governed solely by 49 U.S.C. § 11303. The security interest granted herein shall automatically terminate after all sums due Lessor hereunder (after subtraction therefrom of all sums due Lessee hereunder) have been paid to Lessor, and Lessor shall execute and deliver to Lessee such documents as are reasonably necessary to effectuate such release. Lessor shall not have a security interest in rentals, payments and proceeds under any Sublease allocable to any equipment other than its own Units.

§ 6. Rental Duties. Subject to Lessee's duty of nondiscrimination herein, Lessee hereby agrees to use its best efforts to ensure that the Units are generating revenues at all times for the benefit of the Lessor.

Any written Sublease of the Units for a fixed period in excess of six months requires Lessor's prior written approval. All Prior Subleases listed on Schedule B hereto shall be subject to the terms hereof as if the Lessor had approved such Prior Subleases in writing in accordance with this § 6.

The Lessee further agrees to use its best efforts to fully integrate the Units into the fleet of railcars the Lessee, its Parent and its Affiliated Road leases, manages or owns, so that after January 1, 1984 utilization of the Units shall be on at least 90% parity on a semi-annual basis with that of any other owners or its own railcars similar to the Units (except for utilization lost because of Lessor's

failure to consent to the operation of its Units under a Sublease). The Lessee will not take affirmative steps or consciously omit steps, the effect of which is to treat the Units less favorably than such other similar railcars and which results in the Units being idle more than other similar railcars which the Lessee manages, leases or owns, except that with Subleases of less than 90 days committed duration, or Subleases which require railcars be delivered within time periods which make it impracticable to utilize Lessor's Units, Lessee may utilize those railcars which are closest to the point of delivery to a sublessee. Lessor shall have the option of electing in writing to adopt from and after the date of such election the total terms of any more favorable lease, management or utilization agreement signed since April 11, 1983 covering similar railcars of any other person claiming a lien in railcars managed by Lessee's Parent on May 1, 1983. If Lessor procures a new Sublease, Lessee shall, provided Lessor's Units are available for said Sublease, give first priority to fulfill all railcar requirements of the sublessee thereunder, with Lessor's Units. With respect to Subleases procured by Lessor, Lessee's fee shall be reduced by an amount mutually acceptable to Lessor and Lessee for only those Units placed into such Subleases.

Lessee shall not, without the prior written approval of Lessor, enter into a Sublease and, as soon as practicable after receipt of notice from Lessor, shall terminate such Sublease or use of Lessor's Units therein at Lessor's cost

(pursuant to the termination or substitution provisions of such Sublease) in which Gross Rentals will not exceed by at least \$75 per Unit per month, the sum of the known or foreseeable costs to Lessor of preparing the Units for such Sublease plus the direct car and other costs payable by Lessor plus Lessee's fee as provided in Section 5 hereof. In negotiating and procuring Subleases, Lessee agrees to use its best efforts to maximize Lessor's net rentals (Gross Rentals minus direct car costs) and minimize Lessor's liability for direct car costs with respect to such Subleases.

§ 7. Term of Lease; Cancellation. The initial term of this Lease is two years from the date hereof. The obligations of the Lessee and Lessor hereunder arising out of events which occurred prior to termination of this Lease shall survive expiration of its term. This Lease shall also terminate with respect to any Units destroyed or damaged, the cost of repairing which has not been approved by Lessor when such approval is required.

Notwithstanding any termination provision herein, if with Owner's written consent any Units are placed in service for a period to extend beyond the termination of this Agreement, at Lessee's option those particular Units shall remain under the terms of this Agreement until the earliest possible termination of such service period; provided, that the foregoing provision shall not apply (i) if Lessee may substitute other units in such service and has substitute units available to it; or (ii) if Lessee is in default of its obligations under this Lease with respect to such Units.



Notwithstanding the previous subparagraphs of this Section 7, this Lease is terminable at the option of the Lessor by giving written notice to Lessee, if, in the pending bankruptcy case of Lessee's Parent, either the order approving the Application of Lessee's Parent for Authority to Compromise and Settle Claims to Abandon and Consent to the Foreclosure of Property of the Estate and to Reject Executory Contracts, and Unexpired Leases, and for Other Relief, filed on April 11, 1983, or the order approving the Stipulation and Agreed Order in the form of that attached hereto as Schedule F, does not become final and nonappealable.

§ 8. Identification Marks. To avoid remarking expense, the Lessee will use its best efforts to cause each Unit to be kept numbered with the road number set forth in Schedule A hereto. If a new road number is required, Lessee shall cause such new road number to be placed on the Unit, at Lessor's expense, unless the sublessee agrees or is obligated to assume such expense provided Lessee promptly thereafter duly files and records a statement of the new road numbers with the ICC. If Lessor requests, Lessee will mark and maintain at Lessor's expense, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Cars subject to Lease with Owner filed with the Interstate Commerce Commission" or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law or

requested by Lessor in order to protect the Lessor's title to and interest in such Unit and the rights of the Lessor under this Lease.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 9. Taxes. To the extent that the Units are not subleased to a carrier or other user that will assume and discharge this obligation, and except for Lessee's income taxes, all local, state, Federal, or foreign taxes, including but not limited to ad valorem property taxes attributable to the Units or the revenues generated by the Units shall be payable by the Lessor. Lessee will keep at all times all and every part of such Unit free and clear of all taxes, charges, fines, impositions and assessments which are not the responsibility of Lessor and shall advise and assist Lessor, at Lessor's expense, in contesting any taxes or assessments for which Lessor is responsible hereunder, which Lessor or Lessee reasonably believes are not justified or proper.

In the event any returns, statements or reports with respect to taxes involving any Unit are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor in such Units, as shall be satisfactory to the Lessor or,

where not so permitted, will notify the Lessor of such requirement and will prepare and deliver such reports to the Lessor immediately after the time such reports are filed.

The Lessee shall furnish promptly upon request such other data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

§ 10. Maintenance; Casualty Occurrence; Insurance.

To the extent that the obligations to maintain, insure, and pay for casualty loss of any Unit are not assumed by a sub-lessee, Lessee shall at Lessor's cost and expense perform or cause to be performed ordinary maintenance and repairs required to maintain and keep all of the Units which are subject to this Lease in ordinary operating order eligible for interchange service.

The Lessee shall promptly upon discovery fully notify the Lessor of the particulars of any event which causes any Unit to be ineligible for interchange service or Sublease pursuant to this Lease other than repairs, maintenance, inspection and other costs which do not exceed \$500.00 per Unit or do not aggregate \$4,000.00 for all Units and for which Lessee has any rights of preapproval, and Lessor shall then determine what action is to be taken with respect to each such Unit. If Lessee does not receive instructions from Lessor within 5 days of Lessor's notification by Lessee pursuant to the preceding sentence, then Lessee shall use its best business judgment regarding action to be taken with

respect to each such Unit. The removal or loss of any Unit or Units from service or serviceable condition shall not affect the parties' rights and obligations hereunder with respect to the Units remaining in serviceable condition. At Lessor's option and expense the Lessor shall be entitled to recover possession of any Unit not in serviceable condition or salvage same and recover all proceeds thereof subject to all outstanding amounts due Lessee hereunder.

The Lessee, its Parent or Affiliated Road will, at all times prior to the return of the Units to the Lessor, at Lessor's expense, cause to be carried and maintained property insurance and public liability insurance in respect of the Units, in amounts (subject to customary deductibles), with such insurers as are satisfactory to Lessor, and against risks customarily insured against by railroad companies in respect of similar equipment. Such insurance shall name Lessor as the sole loss payee pursuant to special endorsement with respect to casualty occurrences. If Lessor is not permitted to be named as sole loss payee, Lessee or its affiliates may be named as an additional loss payee provided Lessee or its affiliates hereby assign their rights to payment thereunder and hereby appoint Lessor as their agent and attorney in fact for the purpose of receiving, endorsing and collecting all checks, drafts and other proceeds of such insurance and for the purpose of adjusting and settling all claims with respect to such insurance. Lessee and any of its affiliates may be named as additional insureds with

respect to liability provided that Lessee pays Lessor for the cost of any additional premium amounts attributable to Lessee's and/or any of its affiliates being named as an additional insured. The power of attorney and assignment contemplated hereunder with respect to casualty insurance shall not extend to liability or other coverage to which Lessee or its affiliates may be entitled. A copy of all insurance policies in addition to the certificate of insurance pertaining thereto covering the Units shall be delivered to Lessor and may not be cancelled, modified or terminated by Lessee with respect to the Units without thirty (30) days prior written notice to and the written consent of Lessor. Lessor shall receive directly from the insurer or its agent, all notices affecting insurance coverage of its Units.

The Lessor may, at its option, appoint the Lessee its agent to dispose of any Unit suffering a casualty occurrence or any component thereof, at the best price obtainable on an "As Is, Where Is" basis. Lessee agrees to accept such appointment. The Lessor shall be entitled to all proceeds of such sale, except Lessee's reasonable expenses of disposition which shall remain the obligation of Lessor.

The Lessee shall not be released from any liability in the event of, and shall bear the risk of, any casualty occurrence to any Unit arising out of Lessee's own fault or negligence.

§ 11. Reports. Lessee shall monitor and record fleet allocation of the Units under Lessee's normal procedures. Upon or within five (5) business days after the date for remitting rentals to the Lessor's Account, Lessee shall furnish Lessor Lessee's internally prepared calculations pursuant to which the deposit was made to Lessor's Account.

Lessee shall, within 90 days following the end of each calendar quarter during the term of this Agreement, submit to Lessor a written report of the activity of the Units. This report will summarize for the Units for such service quarter (i) amounts earned and the amounts paid for the use of the Units; (ii) the nature of the amounts earned and the amounts paid for the use of the Units, i.e., whether such amounts represent mileage charges, per diem charges or some other source of revenue; (iii) amounts outstanding from prior months; (iv) operating expenses; (v) management fees; and (vi) amounts remitted to Lessor or payable to Lessee pursuant to this Agreement.

Lessee shall, within 90 days following the end of each calendar year during the term of this Agreement, submit a statement to Lessor signed by an executive officer of Lessee (i) setting forth as of that calendar year end the amount, description and numbers of all Units then subject to this Agreement; the amount, description and numbers of all Units that have suffered a casualty occurrence during the preceding calendar year and are then undergoing major repairs (other than running repairs); (ii) stating that, in

the case of all Units repaired or repainted during the period covered by such statement, and to the best of Lessee's knowledge, the proper number and markings have been preserved or replaced; (iii) certifying that to the best of Lessee's knowledge all amounts to be remitted hereunder by Lessee to Lessor through the preceding December 31 have been remitted, or if any have not been remitted, identifying such unremitted amounts and the reason for their nonremittance; (iv) stating that to the best of Lessee's knowledge after reasonable inquiry, Lessor is in compliance with all of the provisions of this Agreement and that all amounts required to be paid by Lessor have been paid, or if any have not been paid, identifying such unpaid amounts and the reason for their nonpayment; and (v) stating that to the best of Lessee's knowledge the Units have been operated in compliance with the requirements of all regulatory authorities having jurisdiction over the Units.

Lessee shall notify Lessor within 5 business days after becoming aware of the occurrence of any major casualty which would cause any Unit to be taken out of service for over 90 days, in which case such Unit shall be withdrawn from this Lease until such time as it becomes serviceable for interchange service.

§ 12. Inspection. The Lessee at Lessor's cost shall inspect or cause inspection of such Units where necessary to determine that responsible parties under any Sublease have properly maintained and repaired the Units.

§ 13. Storage. During such times as a Unit is not in operation or under a Sublease, the Lessee agrees to safely store such Unit at the Lessor's expense as economically as possible (including free storage to the extent free storage space is available where Lessee, its Parent or Affiliated Road has obtained arrangements for such storage for any equipment managed, owned or leased by them). There shall be no storage costs charged Lessor for Units stored on Lessee's or its Affiliated Road's lines during the term of this Lease for all Units which remain subject to this Lease.

§ 14. Compliance with Laws. Lessee shall register the Units, comply with all applicable statutes, rules, regulations and orders affecting the Units or their use, and file all required initial and ongoing reports with the AAR, ICC or Department of Transportation or any other regulatory authority having jurisdiction over the Units or any Sublease in order to ensure that the Units will at all times be entitled to generate the maximum possible revenue subject to the provisions of any Sublease and will at all times comply with all statutes, rules, regulations and administrative or judicial orders affecting the title, operation and use of the Units.

§ 15. Assessments. At Lessor's cost Lessee shall pay, on behalf of Lessor where applicable, or use its best efforts to cause the responsible sublessee if obligated under a Sublease to pay, all charges, assessments or levies imposed upon, against or with respect to the Units (other



than charges, assessments, or levies payable by any sublessee under a Sublease) of whatever kind or nature and defend, at Lessor's expense, against any such charges and seek revision or appeal from any assessment or charge reasonably deemed improper.

§ 16. Movement. Lessee shall cause the Units to be moved at Lessor's expense (unless that obligation is assumed by a sublessee under a Sublease) to or from the required destination points, as provided in the Subleases, at the lowest possible transportation cost to Lessor, consistent with the operating needs of the sublessee under any such Sublease. If possible, Lessee will cause all Units to be loaded and moved as revenue earning equipment to or from their destinations. Lessee shall also monitor and record movement of each Unit in accordance with its usual and customary business practices.

§ 17. Collection. Lessee, its Parent or its Affiliated Road shall use its best efforts to collect all sums due Lessor or Lessee for the Units under any Sublease or otherwise in respect of the Units, including, without limitation, rental payments, car-hire, mileage allowances, or benefits or railroad indemnity payments and assist Lessor in collecting all sums due Lessor in the event of damage to, or loss or total destruction of, a Unit during the term of this Agreement and shall remit all such sums collected as herein provided. In the event the services of an attorney are required to effect collection of sums due Lessor under

any Sublease of the Units, the attorney's fees and costs of collection shall be chargeable against the revenues or amounts collected before calculation of the fee due Lessee hereunder. No attorney shall be retained without the prior written approval of Lessor if he or she charges more than one-third of the amount collected.

The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times during normal business hours as the Lessor may request during the continuance of this Lease. The Lessee shall promptly notify the Lessor of any material changes or any material proposed changes of which the Lessee has knowledge in its insurance coverage in effect with respect to the Units pursuant to § 10 hereof.

§ 18. Disclaimer of Warranties. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, SUCH UNITS BEING ACKNOWLEDGED AS USED EQUIPMENT AND ACCEPTED BY LESSEE "AS IS, WHERE IS," NOR SHALL THE LESSOR BE RESPONSIBLE TO LESSEE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SUFFERED BY LESSEE (INCLUDING STRICT LIABILITY IN TORT). The Lessor shall have

no responsibility or liability to the Lessee for personal injury, property damage or breach of warranty with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; or (iii) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. Except as otherwise disclosed on Schedule C or D hereto, to the best of Lessee's knowledge and business judgment, the Units described therein are suitable for interchange service and in the usual and customary state of repair for Units of that type and age.

§ 19. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) default shall be made in remittance by Lessee of any rental or casualty proceeds when due into the Lessor's Account, and such default shall continue for five business days, or default shall be made in payment by Lessee of any other amount when due provided for in this Lease and such default shall continue for five business days;

(B) Lessee fails to cause each Unit to be continuously insured during the term of this

Lease in accordance with § 10 of this Lease, or causes or allows such insurance to be modified or terminated without the written consent of Lessor;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, and such default shall continue for 15 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

(D) except for a petition filed by Lessor when Lessee is not otherwise in default hereunder (Lessor expressly agreeing not to file or join in the filing of said petition if Lessee is not in default hereunder), a petition under Title 11 of the United States Code, as now constituted or hereafter amended, shall be filed by or against the Lessee and/or its Parent (excluding Parent's pending bankruptcy case no. 81 B 11964 and its subsidiary's case no. 81 B 12366), provided, however, that Lessee shall have sixty (60) days from the date of filing of such a petition against it to obtain an order dismissing same to cure this Event of Default;

(E) except for proceedings commenced by Lessor when Lessee is not otherwise in default hereunder (Lessor expressly agreeing not to commence or join in the commencement of such proceedings if

Lessee is not in default hereunder), any other proceedings shall be commenced by or against the Lessee or its Parent for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), provided, however, that Lessee shall have the right to cure this Event of Default in the case of involuntary proceedings by obtaining an order dismissing those proceedings within sixty (60) days from their commencement;

(F) Lessee ceases to maintain its corporate existence;

(G) A plan of reorganization of Lessee's Parent corporation is not confirmed by December 31, 1983, in its pending bankruptcy case no. 81 B 11964 in the United States Bankruptcy Court for the Northern District of Illinois, or, such plan or any other action or order as a result of such proceedings, materially and adversely impairs or affects the rights of Lessor hereunder or the ability of Lessee to discharge its obligations hereunder;

(H) Lessee sells, transfers, or assigns all or more than fifty percent (50%) of its rights or assets to any person or entity or merges or consolidates with another entity without the prior written consent of Lessor, unless the acquiring entity or person or Lessee's Affiliated Road enters into an agreement in form and substance satisfactory to Lessor (i) assuming all obligations of Lessee hereunder, (ii) acknowledging that its rights are subject to all rights of Lessor hereunder and (iii) paying all costs, expenses and liabilities concerning the Units, this Lease or any Sublease which Lessor becomes obligated to pay as a result of such sale, transfer, merger, assignment or consolidation;

(I) For any calendar quarter commencing on the earlier of January 1, 1984 or the calendar quarter following the confirmation of such reorganization plan as Lessee's Parent may file in its bankruptcy case, the Net Revenues which were earned (or which but for Lessor's lack of consent might have been earned incrementally, above and beyond actual revenues) by the Units are less than the total number of Units then subject to this Agreement times the sum of \$450 (or, as to any Unit, any lower Net Revenue expressly approved in writing by Lessor); and for this purpose, "Net Revenues"

shall mean all per diem, mileage, rent, lease payments and other income earned by or attributable to the Units less all per diem reclaims and all operating expenses and other amounts (except Lessee's Fee) payable by Lessor pursuant to this Agreement, it being understood that revenues paid by users of Units to Lessee or its Affiliated Road in the ordinary course of their business for goods transported or services rendered shall not be included as Gross Revenues --

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover actual damages for the breach thereof, except that Lessee shall not be liable to Lessor for loss of revenues from (i) operation of the Units if Lessee has acted in good faith and exercised its best business judgment consistent with its obligations hereunder or (ii) a breach under subparagraph (I) of this Section 19 or the parity utilization requirement of Section 6;

(b) by notice in writing to the Lessee, to terminate this Lease as to some or all the Units, whereupon all rights of the Lessee to the use of the Units so terminated

shall absolutely cease and terminate as though this Lease had never been made (except as otherwise provided in Section 7 regarding preapproved Subleases), but the Lessee shall remain liable as herein provided; and thereupon the Lessor may without breach of the peace by its agents enter upon the premises of the Lessee or, where Lessor otherwise has the right to do so, other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom except to the extent of Lessee's claims against Lessor hereunder; but the Lessor and Lessee shall, nevertheless, have a right to recover from the Lessee or Lessor, as the case may be, any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination;

(c) make the payment or perform or comply with any agreement to or with a third party, the nonpayment, nonperformance or non-



compliance which caused such Event of Default, and the amount of such payment and the amount of the reasonable expenses of Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest at the rate of 15% per annum, shall be payable by Lessee as additional rental hereunder upon demand by Lessor;

(d) notify any sublessee of any of the Units terminated hereunder to pay all rentals, payments and other amounts due under the Sublease allocable to the Units while this Agreement is in effect directly to or for the account of Lessor or any designated agent for collection of Lessor;

(e) claim, and enforce its security interest in, the proceeds of the Units terminated hereunder or rentals or other payments allocable to such Units under the Sublease; and

(f) notify Lessee promptly to turn-over or grant access to Lessor and its agents, at Lessor's cost and expense, copies of all books and records in its possession pertaining to the Units, this Lease, and all Subleases to enable Lessor to enforce its other remedies

hereunder and to allow Lessor to take control and possession of the Units. Upon such notice, Lessee shall comply therewith, granting Lessor access during business hours upon reasonable notice, to its premises, books and records, computer data and facilities, to accomplish the purposes hereof, for a period not to exceed sixty days from the date access is first granted, Lessee agreeing to render all reasonable assistance and cooperation to Lessor at no cost to Lessee to enable Lessor to minimize its damages as a result of Lessee's breach.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due from Lessee hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other actual costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, except costs and expenses incurred in connection with the return of any Unit.

The Lessee acknowledges that the right of the Lessor to repossess the Equipment shall not be affected by the filing of a petition by or against the Lessee for reorganization under Title 11 of the United States Code, as now constituted or hereafter amended, or by the commencement by or against the Lessee, of any other proceeding for any relief under any bankruptcy or insolvency laws, or laws

relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions except to the extent provided under Title 11 of the United States Code, as now constituted or hereafter amended, except for petitions and/or proceedings dismissed within 30 days of their filing.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity, including remedies allowed or provided to Lessor under 11 U.S.C. § 1168.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

Notwithstanding anything herein to the contrary, Lessor's sole and exclusive remedy for a breach of (i) Section 3 of this Lease, (ii) the "parity" test contained in Section 6 of this Lease (unless such breach is the result of the intentional and deliberate acts of Lessee), or (iii) the "net revenue" test contained in Section 19(i) of this Lease (unless such breach is the result of the intentional or deliberate acts of the Lessee) shall be the right to terminate this Lease and obtain, at Lessor's expense, possession and return of the Units.

§ 20. Return of Units upon Default. If this Lease shall terminate pursuant to § 19(b) hereof, the Lessor may, upon such further notice, if any, as may be required for compliance with any mandatory legal and labor requirements then in force and applicable to the action to be taken by the Lessor, take or cause to be taken by its agent or agents, immediate possession of each of the Units, or one or more of the Units and may remove the same from possession and use of the Lessee or any other person to the extent Lessor otherwise has the right to do so, and for such purpose may enter upon the premises of the Lessee or any other premises where the Units may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Lessee, all at Lessor's cost and subject to all mandatory requirements of due process of law.

If this Lease shall terminate pursuant to § 19(b) hereof, the Lessee shall deliver possession of the Units to the Lessor at Lessor's expense as soon as is practicable with respect to Units in service under a Sublease (subject to the terms of Section 7 hereof regarding preapproved Subleases). For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall

(a) forthwith and in the usual manner, place such Units upon such storage tracks of the

Lessee or any of its affiliates as the Lessor reasonably may designate to the extent such space is available, at a charge no greater than that usually and customarily charged by Lessee to others and in no event greater than \$1.50 per Unit per day;

(b) permit the Lessor to store such Units on such tracks to the extent space is available at the risk of the Lessor until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessor, except for acts of negligence or wilful misconduct of Lessee, provided, however, that charges of Lessee to Lessor hereunder will be no greater than such charges Lessee usually and customarily charges to others. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same upon reasonable advance notice and without unduly interfering with operations. Except as provided above, all

amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor, provided, however, that Lessor shall remain responsible for charges incurred after termination which are of a type which are its responsibility under this Lease prior to termination and provided further, that for so long as Lessee is using its best efforts to comply with its obligations hereunder with respect to Units terminated from this Lease and is not in default with respect to its payment obligations hereunder, but in no event (except for preapproved Subleases pursuant to Section 7 hereof, in which case Lessee shall be entitled to its fee until such Sublease is terminated) for a period exceeding thirty (30) days after such termination, Lessee shall be entitled to subtract from amounts earned under a Sublease and to be turned over to Lessor, its fee as provided in Section 5 hereof.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 20, and subject to applicable union and regulatory requirements and subject further to Lessee's failure to use its best efforts to secure return of the Units to Lessor in compliance with its obligations hereunder, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit to the

extent Lessor otherwise has the right to do so, in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 21. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee pursuant to (i) a bona fide sale of the Units to an unaffiliated third party or (ii) any other assignment of this Lease or sale of the Units, if Lessor remains obligated to Lessee for performance of Lessor's covenants hereunder. All other assignments require the prior written consent of Lessee. Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns.

Any Sublease may provide that the sublessee, so long as it shall not be in default under such Sublease and Lessee shall not be in default under this Lease, shall be entitled to the possession of the Units included in such Sublease and the use thereof; provided, however, that every such Sublease shall be subject to the rights and remedies of the Lessor under this Lease in respect of the Units covered by such Sublease upon the occurrence of an Event of Default thereunder or hereunder.

Lessee shall not assign any rights hereunder (except Lessee may assign its fee hereunder to its Parent) or under any Sublease, whether for security purposes or

otherwise, without the written consent of Lessor, and any such purported assignment without such consent is void. Lessee will not cause, permit or suffer any claim, assessment, lien or other charge on any of the Units unless such claim, lien, assessment or other charge arises by failure of Lessor to pay expenses or costs which are its responsibility hereunder. Lessor acknowledges that except for its security interest pertaining to rentals, payments and proceeds of the Units under Sublease, its ownership of the Units, and its rights upon default or termination, the Subleases remain the property of Lessee.

Lessee may enter into an agreement with Parent for management of the Units. Except for Prior Subleases of Lessee's Parent approved by Lessor, such agreement shall not include a Sublease or similar agreement of the Units to Parent, but Parent, acting as agent for Lessee, shall have the right to place the Units on a Sublease in its own name (but as between Parent and Lessee, as Lessee's agent) with other units Parent manages and perform services on behalf of Lessee with respect to the Units and any Sublease. Except as otherwise provided in the Acknowledgment, and except to the extent that Lessee's fee has been assigned to its Parent, Lessee covenants and warrants that Parent shall have no rights (i) to the Units or any proceeds thereof; (ii) against Lessor for expenses incurred with respect to the Units except as agent for Lessee; or (iii) to any Gross Rentals or other amounts arising from the Units or any Sublease except



as agent for Lessee. Except for Prior Subleases approved by Lessor and except as otherwise provided in the Acknowledgment, Parent's claims and recourse, if any, for expenses incurred or services rendered in connection with management of the Units shall be limited to Lessee and shall not be assertable against Lessor, the Units, the rentals or other proceeds or payments in respect of the Subleases of the Units. Any management or other agreement between Lessee and its Parent, the Affiliated Road or any other party concerning any Units, any Subleases, any rentals or other proceeds shall be at all times subordinate and subject to Lessor's rights herein. Nothing contained herein or in any agreement between Lessee and its Parent shall diminish or otherwise impair the respective rights and obligations of the parties hereunder.

§ 22. Renewal Options. The Lessor may by written notice delivered to the Lessee not less than sixty (60) days prior to the end of the original or any renewal term of this Lease elect to extend the term of this Lease in respect of all or fewer than all of the Units (but not fewer than 50 Units) then covered by this Lease, for an additional one year period commencing on the scheduled expiration of the original or renewal term of this Lease. Such extension shall otherwise be on the same terms and conditions as are contained in this Lease, including this renewal option provision (subject to a maximum of three one-year renewals).

§ 23. Return of Units upon Expiration of Lease Term. As soon as practicable on or after the expiration of the

original term or the extended term of this Lease, the Lessee will, at the request of the Lessor, deliver possession of each Unit to the Lessor upon such storage tracks of the Lessee as available and as the Lessee may reasonably designate, and permit the Lessor to store such Unit on such tracks at a cost not exceeding \$1.50 per day per Unit, and transport the same, to any reasonable place on the lines of the railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by and all at the expense of the Lessor. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same during business hours upon reasonable advance notice thereof and without unduly interfering with operations. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor, provided, however, that Lessor shall remain responsible for direct car costs and charges which are its responsibility under this Lease, whether incurred prior to or after termination and provided further that Lessee is using its best efforts to comply with Lessor's directions concerning removal of its Units from any Sublease, Lessee shall be entitled to its fee as provided in Section 5 of this Lease for a period not exceeding sixty (60) days after expiration of this Lease (except that this limitation

shall not apply to preapproved Subleases under Section 7 of this Lease).

§ 24. Initial Expenses. Lessee represents to the best of its knowledge that Lessor will not incur or be charged by Lessee for any expenses for making the Units ready for this Lease, or storing, transporting, inspecting, remarking, painting or repairing, insuring or taking other actions or incurring other expenses with respect to the Units other than as requested or approved by Lessor or in connection with the placement of the Units into a future Sublease or except as disclosed on Schedule C attached hereto. Lessee further represents to the best of its knowledge and business judgment that the Units are suitable for interchange service and in the usual and customary state of repair for Units of that type and age, except as disclosed on Schedule D attached hereto showing the nature of the repairs needed and the estimated amounts it will cost to bring such Units into condition suitable for interchange service.

§ 25. Conditions Precedent. This Lease shall not be effective unless and until the following conditions have been fulfilled (unless waived by Lessor or Lessee, as the case may be):

1. Lessee has furnished an opinion satisfactory to Lessor of Messrs. McCann, Garland, Ridall, & Burke or other counsel satisfactory to Lessor to the effect that Lessee is authorized to enter into

this Lease and that it has been duly authorized and executed.

2. Lessor has furnished an opinion of Messrs. Jenner & Block satisfactory to Lessee to the effect that Lessor is authorized to enter into this Lease and that it has been duly authorized and executed.
3. An Acknowledgment from Lessee's Parent has been duly executed and delivered to Lessor in the form of that attached hereto as Schedule E acknowledging Lessor's rights and security interest hereunder.
4. An order has been entered in the bankruptcy proceeding of Lessee's Parent authorizing and approving the execution of Parent's Acknowledgment.
5. Lessee is not in breach of any provision of this Lease.

§ 26. Recording. The Lessor, at its own expense, will cause this Lease to be filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will, at Lessor's cost, from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to Lessor's satisfaction, of the Lessor's interests in the Units, or for the purpose of carrying out the intention of this Lease. This Lease shall be filed and recorded with the Interstate

Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 27. Overdue Payments. Anything to the contrary herein contained notwithstanding, any nonpayment of amounts and obligations when due hereunder shall result in the obligation on the part of the Lessee or Lessor, as the case may be, promptly to pay, to the extent legally enforceable, interest at a rate per annum equal to fifteen percent (15%) on the overdue amounts and obligations for the period of time during which they are overdue (or such lesser amount as may be legally enforceable), plus reasonable attorneys' fees and collection costs if legal proceedings are instituted to collect or enforce such obligations and amounts.

§ 28. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, to the address listed in Section 1 of this Lease, or at such other address as such party shall hereafter furnish to the other party in writing.

§ 29. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 30. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Lessor and marked "Original" shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof.

§ 31. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and 11 U.S.C. § 1168.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

LESSOR:

CITICORP LEASING INC.

By:

Its:

J. H. Edwards  
VICE PRESIDENT

Corporate Seal

Attest:

*Herbert L. C. Rash*  
Its: ASST. SECRETARY

LESSEE:

\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Corporate Seal

Attest:

\_\_\_\_\_  
Its: \_\_\_\_\_

STATE New York

COUNTY OF Westchester

)  
)  
) ss.

On this 16th day of September, 1983, before me personally appeared Garth N. Edwards, to me personally known, who, being by me duly sworn, says that he/she is a Vice President of Citicorp Leasing, Inc., an a Delaware Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by proper authority therefor, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

My Commission expires:

Kenneth A. Raskin  
Notary Public

KENNETH A. RASKIN  
Notary Public, State of New York  
No. 39-4763384  
Qualified in Nassau County  
Certificate filed in Westchester County  
Commission Expires March 30, 1984

STATE OF ILLINOIS

COUNTY OF \_\_\_\_\_

)  
)  
) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he/she is \_\_\_\_\_ of \_\_\_\_\_, an \_\_\_\_\_, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by proper authority therefor, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

My Commission expires:

\_\_\_\_\_  
Notary Public



Corporate Seal

Attest:

Its: \_\_\_\_\_



Corporate Seal

Attest:

James B. Klein  
Its: VICE PRESIDENT

LESSEE:

UPPER MERION AND LYNN RAILROAD COMPANY

By: Jennies T. Hurst  
Its: VICE PRESIDENT

STATE \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he/she is \_\_\_\_\_ of \_\_\_\_\_, an \_\_\_\_\_, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by proper authority therefor, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires:  
\_\_\_\_\_

STATE OF ILLINOIS )  
 )  
COUNTY OF \_\_\_\_\_ Cook ) ss.

On this 18th day of October, 1983, before me personally appeared Dennis T. Hurst, to me personally known, who, being by me duly sworn, says that he/she is Vice President of Upper Merion and Plymouth X am Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by proper authority therefor, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

My Commission expires:

My Commission Expires Jan. 27, 1985

*Sharon Schumacher*  
\_\_\_\_\_  
Notary Public

SCHEDULE A

DESCRIPTION:

Ninety (90) 100-ton open-top hopper cars, NW Class H-12, construction by Shenandoah-Virginia Corporation, delivery 1979.

RAILCAR ROAD NUMBERS:

UMP 6215, 6216, 6218, 6220, 6225, 6231, 6232, 6234, 6238, 6242, 6243, 6245, 6247, 6248, 6250, 6258, 6261, 6268, 6283, 6284, 6286, 6288, 6289, 6290, 6292, 6201, 6202, 6205, 6208, 6209, 6211, 6212, 6213, 6214, 6221, 6222, 6223, 6229, 6230, 6237, 6249, 6252, 6255, 6256, 6257, 6260, 6263, 6267, 6273, 6274, 6275, 6276, 6278, 6279, 6293, 6294, 6168, 6175, 6184, 6197, 6236, 6253, 6270, 6282, 6297, 6240, 6241, 6244, 6246, 6254, 6259, 6264, 6265, 6266, 6269, 6271, 6280, 6281; TWRY 6083, 6087, 6099, 6103, 6111, 6114, 6119, 6174; BDMX 171, 175; UMP 6022, 6193.

## SCHEDULE B

### PRIOR SUBLEASES OF UNITS

Railcar Lease Agreement dated as of June 10, 1982, as amended by Letter Agreement dated August 6, 1982, between Funding Systems Railcars, Inc., Lessor, and CIS Equipment Leasing Corporation, Lessee, which includes the following Units: TWRY 6083, TWRY 6087, TWRY 6099, TWRY 6103, TWRY 6111, TWRY 6114, TWRY 6119 and TWRY 6174.

Railcar Lease Agreement dated as of March 24, 1982 between Funding Systems Railcars, Inc., Lessor, and Blue Diamond Mining, Inc., Lessee, which includes the following Units: BDMX 171 and BDMX 175.

Assignment to Denver & Rio Grande Western Railroad, cancelable on 30 days or less notice, of the following Units: UMP 6201, UMP 6202, UMP 6209, UMP 6211, UMP 6213, UMP 6222, UMP 6223, UMP 6230, UMP 6249, UMP 6252, UMP 6256, UMP 6257, UMP 6260, UMP 6263, UMP 6267, UMP 6274, UMP 6275, UMP 6279, UMP 6293 and UMP 6294.

Assignment to Milwaukee Road, cancelable on 30 days or less notice, of the following Units: UMP 6168, UMP 6175, UMP 6184, UMP 6205, UMP 6212, UMP 6214, UMP 6221, UMP 6229, UMP 6237, UMP 6255, UMP 6270, UMP 6276, UMP 6278 and UMP 6297.

Assignment to Kansas City Southern Railroad, cancelable on 30 days or less notice, of the following Units: UMP 6240, UMP 6241, UMP 6244, UMP 6246, UMP 6254, UMP 6259, UMP 6264, UMP 6265, UMP 6266, UMP 6269, UMP 6271, UMP 6280 and UMP 6281.

Assignment to British Columbia Railway, cancelable on 30 days or less notice, of the following Units: UMP 6022 and UMP 6193.

Assignment to Wisconsin & Southern Railroad, cancelable on 30 days or less notice, of the following Units: UMP 6197, UMP 6208, UMP 6236, UMP 6253, UMP 6273.

## SCHEDULE C

### INITIAL EXPENSES

With the exception of repair and maintenance costs listed on Schedule D, Lessee, to the best of its information, knowledge and belief, is not aware of any other initial expenses required to make the Units ready for the Lease. Lessee acknowledges Lessor's rights to the revenues, rentals and proceeds from the Units (minus Lessee's fee) as provided in the Lease from and after May 1, 1983, and Lessor acknowledges its responsibility for costs incurred with respect to the Units from and after May 1, 1983 pursuant to the terms of the Lease. Lessor further acknowledges that any direct car costs of operating the Units incurred after May 1, 1983, including but not limited to the following types of costs necessitated under, or required to make the Units ready for, a Sublease entered into thereafter are not "Initial Expenses" as defined in the Lease:

- Repairs and maintenance
- Insurance
- Movement
- Storage
- Taxes
- ICC recordations

# SCHEDULE D

## UNITS IN NEED OF REPAIRS

| <u>Unit Number</u>                               | <u>Estimated Cost<br/>of Repair</u> |
|--|-------------------------------------|
| Unit Unfit for Interchange Service:<br>TWRY 6174 | \$ Unknown (1)                      |

Units in Need of Maintenance and Repair;  
but Still Fit for Interchange Service:

|          |              |
|----------|--------------|
| UMP 6222 | 5,000.00 (2) |
| UMP 6270 | 1,500.00 (3) |
| UMP 6282 | 1,075.00     |
| UMP 6289 | 45.00        |

1. Repair is responsibility of Tradewater Railway Company resulting from derailment on their line. Amount will be known within 21 days and will exceed \$2,000.00.
2. Repair is responsibility of Denver & Rio Grande Western Railroad. Lessee is in possession of valid defect card.
3. Repair is responsibility of Milwaukee Road. Lessee is in possession of valid defect card.

LESSEE'S LISTING OF UNITS IN NEED OF REPAIRS AND THE ESTIMATED COST OF SUCH REPAIRS IS PREPARED ON THE BASIS OF LESSEE'S BEST INFORMATION, KNOWLEDGE AND BELIEF. LESSEE IS IN NO WAY RESPONSIBLE FOR UNINTENDED OMISSIONS OR FOR THE ACTUAL REPAIR COSTS OF ANY UNITS DEVIATING FROM THE LISTED ESTIMATED COSTS.